

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Dec 10, 2024**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JEFF J.,<sup>1</sup>

Plaintiff,

v.

CAROLYN COLVIN, Acting  
Commissioner of Social Security,<sup>2</sup>

Defendant.

No. 4:24-cv-3086-EFS

**ORDER REVERSING THE ALJ'S  
DECISION IN PART AND  
REMANDING FOR ALTERATION  
OF TITLE 16 DISABILITY START  
DATE**

Plaintiff Jeff J. asks the Court to reverse the Administrative Law Judge's (ALJ) denial of Title 2 benefits and to alter the start date for the award of Title 16 benefits. As is explained below, the ALJ's finding that Plaintiff should be considered in the advanced-age category before his 55<sup>th</sup> birthday is supported by

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<sup>1</sup> For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

<sup>2</sup> Carolyn Colvin is now the Acting Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 25(d) and 42 U.S.C. § 405(g), she is hereby substituted for Martin O'Malley as the Defendant

1 substantial evidence; however, the ALJ's decision to limit the borderline-age  
2 situation to 3½ months—rather than 6 months—before Plaintiff's 55<sup>th</sup> birthday  
3 was not supported by substantial evidence or meaningful explanation. Therefore,  
4 this matter is remanded for payment of additional Title 16 benefits from June 21,  
5 2023, to September 5, 2023—the remainder of the six-month period before his 55<sup>th</sup>  
6 birthday. In all other regards, Plaintiff's requested relief is denied.

### 7 I. Background

8 On October 22, 2020, Plaintiff applied for benefits under Titles 2 and 16,  
9 claiming disability beginning May 30, 2019, based on physical and mental  
10 impairments.<sup>3</sup> Plaintiff has a GED, past relevant work as an auto body technician,  
11 and no substantial gainful activity since the alleged disability onset date. Plaintiff  
12 was born December 21, 1968. In the adult disability report supporting his  
13 applications, Plaintiff complained that mental issues, torn biceps, and a rotator  
14 cuff impairment limited his ability to work.<sup>4</sup>

15 After the agency denied benefits, ALJ Barry O'Melinn held a telephonic  
16 hearing on September 6, 2023, at which Plaintiff and a vocational expert testified.<sup>5</sup>  
17 Plaintiff testified that he had pain and weakness in both hands, shoulders, and  
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20 <sup>3</sup> AR 236–49.

21 <sup>4</sup> AR 291–98.

22 <sup>5</sup> AR 43–73, 124–45.

1 right elbow, and difficulties with his memory and focusing.<sup>6</sup> It was discussed that  
2 Plaintiff has a history of diabetic neuropathy of the lower extremities, anxiety with  
3 some panic attacks, attention deficit hyperactivity disorder (ADHD), and  
4 depression. Plaintiff shared that he helps his parents maintain their property, and  
5 that physical movement, along with listening to audiobooks, helps keep his mind  
6 focused, as he has difficulty with his thoughts bouncing from one idea to another.  
7 He also found that yoga helps with his anxiety. He reported that he helps his  
8 neighbors clean their barn and with other farm tasks. When he is physically active,  
9 he has to sit down and take rests because of the neuropathy in his feet, and he also  
10 has problems holding things in his hands and when walking on gravel. He had  
11 carpal tunnel surgery on his dominant right hand about fourteen months before  
12 the hearing, and he would be having surgery on his left hand. He was attending  
13 physical therapy for his hip, and he still had problems with his shoulders. He  
14 shared that he has difficulty completing paperwork and with his memory. He  
15 reported being sober since 2021.

16 The ALJ granted Plaintiff's Title 16 application for supplemental security  
17 income benefits as of the September 6, 2023 hearing date, and denied the Title 2  
18 application for disability insurance benefits because the date last insured was  
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22 <sup>6</sup> AR 67.  
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1 before the hearing.<sup>7</sup> The ALJ found Plaintiff's alleged symptoms were not fully  
2 supported and that:

- 3 • the prior administrative medical finding of Suzanne Castro, PsyD,  
4 "only somewhat persuasive" "overall" and her opinion that Plaintiff  
5 did not have a severe mental health impairment was not persuasive.
- 6 • the prior administrative medical finding of Dorothy Leong, MD, that  
7 Plaintiff could perform at a medium level of exertion was not  
8 persuasive and her overall opinion was "only somewhat persuasive."
- 9 • the evaluating opinion of David Mashburn, PhD, "only somewhat  
10 persuasive."<sup>8</sup>

11 As to the sequential disability analysis, the ALJ found:

- 12 • Plaintiff met the insured status requirements through March 31,  
13 2023.
- 14 • Step one: Plaintiff had not engaged in substantial gainful activity  
15 since May 30, 2019, the alleged onset date.

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17 <sup>7</sup> AR 15–42. Per 20 C.F.R. §§ 404.1520(a)–(g), 416.920(a)–(g), a five-step evaluation  
18 determines whether a claimant is disabled. If there is medical evidence of drug or  
19 alcohol addiction, the ALJ must then determine whether drug or alcohol use is a  
20 material factor contributing to the disability. 42 U.S.C. § 423(d)(2)(C); 20 C.F.R. §  
21 416.935; *Sousa v. Callahan*, 143 F.3d 1240, 1245 (9th Cir. 1998).

22 <sup>8</sup> AR 27–31.

1           • Step two: Plaintiff had the following medically determinable severe  
2           impairments: diabetes mellitus with neuropathy, bilateral carpal  
3           tunnel syndrome, shoulder disorders, chronic obstructive pulmonary  
4           disease, depression, and ADHD.

5           • Step three: Plaintiff did not have an impairment or combination of  
6           impairments that met or medically equaled the severity of one of the  
7           listed impairments.

8           • RFC: Plaintiff had the RFC to perform light work except:

9                   He is limited to occasional handling and fingering and to  
10                  occasional overhead reaching. He can understand, carry out  
11                  and remember simple instruction and make commensurate  
12                  work-related decisions, respond appropriately to  
13                  supervision, coworkers, and work situations. He can deal  
14                  with routine changes in work setting and maintain  
15                  concentration, persistence, and pace for up to and including  
16                  two hours at a time, with normal breaks throughout a  
17                  normal workday. [H]e is not suitable for production rate or  
18                  pace work.

19           • Step four: Plaintiff was unable to perform his past relevant work.

20           • Step five: Plaintiff was an individual closely approaching advanced  
21           age and thus applying the age categories non-mechanically and  
22           considering his additional adversities, on September 6, 2023, the  
23           Plaintiff's age category changed to an individual of advanced age and  
          there were no jobs that existed in significant numbers in the national  
          economy that he could perform based on Medical-Vocational Rule  
          202.06. Yet, before September 6, 2023, considering Plaintiff's RFC,  
          age, education, and work history, Plaintiff could perform work that

existed in significant numbers in the national economy, such as rental clerk, counter clerk, and inspector.<sup>9</sup>

Plaintiff timely requested review of the ALJ's decision by the Appeals Council and now this Court.<sup>10</sup>

## II. Standard of Review

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error" and such error impacted the nondisability determination.<sup>11</sup> Substantial evidence is "more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>12</sup>

<sup>9</sup> AR 18–37.

<sup>10</sup> AR 1-6.

<sup>11</sup> *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). See 42 U.S.C. § 405(g); *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) ), *superseded on other grounds by* 20 C.F.R. § 416.920(a).

<sup>12</sup> *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)). See also *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court “must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion,” not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*,

### III. Analysis

Plaintiff argues the ALJ erred in limiting the borderline-age situation to September 6, 2023, when evaluating the medical opinions, and at step 5. The Commissioner argues the ALJ's evaluation of the record is supported by substantial evidence and adequate explanation. As is explained below, other than the ALJ's selected date for the borderline-age situation, the ALJ's findings are supported by substantial evidence and meaningful explanation.

#### A. **Borderline Age: Plaintiff establishes error in part as to Title 16.**

The ALJ found "[a] borderline age situation exists because the claimant is within a few days to a few months of attaining the next higher age category and applying the chronological age would result in a denial of Title 2 or 16."<sup>13</sup> The ALJ also found "applying the age categories non-mechanically, considering the additional adversities in the case, on September [6], 2023, the claimant's age category changed to an individual of advanced age" and when applying the advanced age category Plaintiff was considered disabled per the Medical Vocational Guidelines.<sup>14</sup> In support of the finding, the ALJ found that Plaintiff's RFC was less than the full range of light work, he has past relevant work as an auto body

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143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]").

<sup>13</sup> AR 32 (cleaned up).

<sup>14</sup> *Id.* See 20 C.F.R. Part 404, Subpt. P, App. 2.

1 worker, he has a GED, and he “would likely have difficulty adjusting to other work  
2 than would a younger claimant with a less severe history of musculoskeletal and  
3 mental issues.”<sup>15</sup> At the time of the administrative hearing on September 6, 2023,  
4 Plaintiff was 3½ months shy of his 55<sup>th</sup> birthday—and the “advanced age”  
5 category.<sup>16</sup>

6 Plaintiff agrees the ALJ properly found he was in a borderline-age situation  
7 as he neared his 55<sup>th</sup> birthday but argues the ALJ should not have limited the  
8 borderline-age situation to September 6, 2023, instead the ALJ should have used  
9 the date of his protective filing date for both applications, which was October 22,  
10 2020, or minimally, March 31, 2023, his date last insured. In response, the  
11 Commissioner argues that substantial evidence supports the ALJ’s step-five  
12 finding, including his decision to apply the advanced-age category beginning  
13 September 6, 2023.

14 The ALJ’s decision to apply the advanced-age category before Plaintiff’s 55<sup>th</sup>  
15 birthday was consequential because if Plaintiff remained in the “closely  
16 approaching advanced age” category—age 50–54—the remaining vocational factors  
17 would direct a finding of “not disabled” under the Medical Vocational Guidelines,  
18 but if he is in the “advanced age” category—age 55 or older—he is disabled per the  
19 Grids. The regulations that define the age categories specify:

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21 <sup>15</sup> AR 33.

22 <sup>16</sup> See 20 C.F.R. §§ 404.1563(e), 416.963(e).  
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1 We will not apply the age categories mechanically in a borderline  
2 situation. If you are within a few days to a few months of reaching an  
3 older age category, and using the older age category would result in a  
4 determination or decision that you are disabled, we will consider  
5 whether to use the older age category after evaluating the overall  
6 impact of all the factors of your case.<sup>17</sup>

7 The factors to be considered include the RFC, age, education, work experience, and  
8 additional elements that seriously affect the claimant's ability to adjust to work.<sup>18</sup>

9 The regulations do not define a "few months"; however, the Program Operations  
10 Manual System (POMS) states, "We define the term 'a few' using its ordinary  
11 meaning, a small number. Consider a few days to a few months to mean a period  
12 not to exceed six months."<sup>19</sup> HALLEX I-2-2-42-C.3 states:

13 The ALJ will take a "sliding scale" approach when determining which  
14 age category to use. To support the use of the higher age category, the  
15 evidence must show that the factor(s) have a progressively more  
16 adverse impact on the claimant's ability to adjust to other work as the  
17 period between the claimant's actual age and attainment of the next  
18 higher age category lengthens.

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19 <sup>17</sup> 20 C.F.R. §§ 404.1563(b), 416.963(b).

20 <sup>18</sup> HALLEX I-2-2-42-C.2. The HALLEX is an internal Social Security  
21 Administration policy manual that does not impose judicially enforceable duties on  
22 either the ALJ or this Court. *Clark v. Astrue*, 529 F.3d 1211, 1216 (9th Cir.2008).

23 <sup>19</sup> POMS DI 25015.006-B. *See Lockwood v. Comm'r Soc. Sec. Adm.*, 616 F.3d 1068,  
1073 (9th Cir. 2010 (recognizing that although the POMS do not carry the force of  
law, they are "entitled to respect" as they "have the power to persuade").

1 “[T]he ALJ will explain in the decision that he considered the borderline age  
2 situation, state whether he applied the higher age category or the chronological  
3 age, and note the specific factor(s) the ALJ considered.”<sup>20</sup>

4 Plaintiff argues that because there was no medical change or functional  
5 change in his conditions since his protective filing date of October 22, 2020 (or his  
6 date last insured of March 31, 2023) and the hearing on September 6, 2023,  
7 substantial evidence does not support the ALJ’s decision to use September 6, 2023,  
8 rather than one of the earlier dates, as the date he changed age categories. To  
9 support this argument, Plaintiff highlights that the ALJ did not explain what the  
10 “additional adversities” were that supported a finding that Plaintiff changed to the  
11 advanced-age category on September 6, 2023. Plaintiff also points out that the  
12 Grids only account for exertional limitations and not for non-exertional limitations  
13 caused by Plaintiff’s mental-health impairments. In response, the Commissioner  
14 contends the ALJ applied the correct standard and that the decision is supported  
15 by substantial evidence.

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18 <sup>20</sup> HALLEX I-2-2-42-C.5. As the Ninth Circuit, “HALLEX instructs ALJs to  
19 consider additional vocational adversities that could justify the use of the higher  
20 age category, and states that absent a showing of additional adversities justifying  
21 the use of the higher age category the adjudicator need not explain his or her use of  
22 the claimant’s chronological age.” *Lockwood*, 616 F.3d at 1072.

1 The ALJ appropriately considered the Grids and whether Plaintiff should be  
2 considered of “advanced age” before his 55<sup>th</sup> birthday. However, the ALJ did not  
3 explain why September 6, 2023, was the appropriate triggering date for “advanced  
4 age,” and the record itself does not indicate a reason why such should be selected  
5 as the triggering date. Instead, the medical record reflects that during the early  
6 months of 2023 Plaintiff sought increased treatment for his reported memory  
7 issues and his lumbar back pain with radiculopathy affecting his left lower  
8 extremity.<sup>21</sup> This continued through the spring of 2023 with Plaintiff being  
9 observed with lumbar and pelvic somatic dysfunction, associated bilateral lower  
10 back paraspinal tightness, a painful right hip with flexion and external rotation,  
11 and weakness with flexion from the straight leg position in April 2023.<sup>22</sup> At  
12 another appointment in April 2023, Plaintiff was observed as anxious, sad, and  
13 inattentive with impaired memory.<sup>23</sup> Again, in May 2023, Plaintiff was observed as  
14 being anxious with an impaired memory, although he was cooperative and pleasant  
15 as well.<sup>24</sup> At an appointment a week later for his right hip pain, Plaintiff was  
16 observed to be in moderate distress with an antalgic gait, with limited range of  
17 motion, particularly in his hip flexion, extension, and internal rotation, secondary

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19 <sup>21</sup> AR 1124–46, 1411–15.

20 <sup>22</sup> AR 1309–12. *See also* AR 1343–44.

21 <sup>23</sup> AR 1292.

22 <sup>24</sup> AR 1556.

1 to pain, with radiation of pain in the right groin and knee, and point tenderness at  
2 the right sacroiliac joint.<sup>25</sup> The remaining medical records from June and July  
3 2023, which are the last treatment notes of record—note Plaintiff’s continued  
4 concerns about memory and physical conditions, but do not indicate a new acute  
5 injury.<sup>26</sup>

6 This medical record, along with Plaintiff’s testimony, does not shed light on  
7 why the ALJ selected September 6, 2023, as the triggering date for “advanced age”  
8 or onset of the “additional adversities” rather than use the full six-month period  
9 allowed by the POMS’s and HALLEX’s interpretation of the term “few months” in  
10 20 C.F.R. §§ 404.1563(b) and 416.963(b). Plaintiff had the same impairments, was  
11 of the same age (54), had the same educational level (GED), and the same work  
12 experience for the full six months prior to his 55<sup>th</sup> birthday. Therefore, the ALJ’s  
13 decision to extend the “advanced age” category by 3½ months (September 6, 2023),  
14 rather than the permitted 6 months (June 21, 2023), is not supported either by  
15 meaningful explanation or substantial evidence. Accordingly, this matter is

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21 <sup>25</sup> AR 1545.

22 <sup>26</sup> *See, e.g.*, AR 1439–99.

1 remanded for payment of Title 16 benefits for the time period of June 21, 2023, to  
2 September 5, 2023.<sup>27</sup>

3 **B. Medical Opinions: Plaintiff fails to establish consequential error.**

4 Plaintiff argues the ALJ improperly analyzed two medical opinions. The  
5 Commissioner disagrees. The Court finds no error.

6 1. Standard

7 The ALJ must consider and articulate how persuasive he found each medical  
8 opinion and prior administrative medical finding, including whether the medical  
9 opinion or finding was consistent with and supported by the record.<sup>28</sup> The factors  
10 for evaluating the persuasiveness of medical opinions include, but are not limited  
11 to, supportability, consistency, relationship with the claimant, and specialization.<sup>29</sup>  
12 Supportability and consistency are the most important factors.<sup>30</sup> When considering  
13 the ALJ's findings, the Court is constrained to the offered by the ALJ.<sup>31</sup>

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15 <sup>27</sup> This remand does not alter the ALJ's denial of Title 2 benefits because the date  
16 last insured—March 31, 2023—does not fall within the 6-month period before  
17 Plaintiff's 55<sup>th</sup> birthday.

18 <sup>28</sup> 20 C.F.R. §§ 404.1520c, 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th  
19 Cir. 2022).

20 <sup>29</sup> 20 C.F.R. §§ 404.1520c, 416.920c(c)(1)–(5).

21 <sup>30</sup> 20 C.F.R. §§ 404.1520c, 416.920c(b)(2).

22 <sup>31</sup> *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014).

2. Dr. Mashburn

Plaintiff argues the ALJ erred by not finding Dr. Mashburn's opined limitations more persuasive. Dr. Mashburn conducted a psychological examination in September 2020, which included a clinical interview, a mental-status examination, a Hamilton Depression assessment (score of 17, moderate), a Folstein Mini-Mental Status Examination (score in normal range), and no record review.<sup>32</sup> Dr. Mashburn diagnosed Plaintiff with major depression moderate recurrent, ADHD by history, and alcohol dependence in remission. He opined that Plaintiff was markedly limited in his ability to complete a normal workday or work week without interruptions from psychologically based symptoms and moderately limited in his abilities to understand, remember, and persist in tasks by following detailed instructions; communicate and perform effectively in a work setting; make simple work-related decisions; adapt to changes in a routine work setting; and perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision.<sup>33</sup>

Plaintiff argues the ALJ erred by relying on POMS DI 24503.045-C.2 as a basis to diminish the weight given to Dr. Mashburn's report. However, after recognizing that POMS DI 24503.045 directs an ALJ to not discuss the decision analysis performed by another governmental agency, the ALJ proceeded to

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<sup>32</sup> AR 471–77.

<sup>33</sup> AR 471–77.

1 evaluate, as is statutorily required, whether Dr. Mashburn’s opined limitations  
2 were supported by or consistent with the record. The ALJ found Dr. Mashburn’s  
3 opinion that Plaintiff has a marked limitation in his ability to complete a normal  
4 workday or work week without interruptions not persuasive because 1)  
5 Dr. Mashburn’s opinion was largely “checked off responses without detailed  
6 medical evidence,” 2) the medical evidence did not support the opined marked  
7 limitations, and 3) Plaintiff was “able to carry out a relatively broad range of  
8 activities.”<sup>34</sup>

9 Dr. Mashburn did set forth his opinions in the check-box format that the  
10 form called for. This by itself is not reason to discount his opinion; however, the  
11 ALJ appropriately considered that Dr. Mashburn’s comments were based largely  
12 on Plaintiff’s self-reports to him and on the self-assessments performed, with no  
13 review of underlying records. Dr. Mashburn found that Plaintiff’s orientation,  
14 perception, memory, fund of knowledge, concentration, abstract thought, and  
15 insight and judgment were normal, but that his thought process and content were  
16 not within normal limits because of “negative self-narrative [sic] he battles,” and he  
17 observed Plaintiff with a depressed mood, although he was cooperative with no  
18 sense of malingering, was friendly, and was clearly trying with effort.<sup>35</sup> Based on  
19 the contents of Dr. Mashburn’s report, when compared with the longitudinal

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21 <sup>34</sup> AR 31.

22 <sup>35</sup> AR 473–74.

1 medical record, the ALJ's decision to find that Dr. Mashburn's marked limitation  
2 was not supported by either explanation or the medical evidence is supported by  
3 substantial evidence. In addition, the ALJ's finding that Dr. Mashburn's opinion  
4 that Plaintiff's daily activities, which included performing chores at home and for  
5 neighbors, were inconsistent with Dr. Mashburn's marked limitation is supported  
6 by substantial evidence. Moreover, the crafted RFC, which limits Plaintiff to simple  
7 instruction and work-related decisions with no production rate or pace work,  
8 accounts for Dr. Mashburn's moderate limitations. Plaintiff fails to establish the  
9 ALJ erred when evaluating Dr. Mashburn's opinion.

10 3. Dr. Castro

11 Plaintiff argues it was error for the ALJ to both give weight to Dr. Castro's  
12 examiner report while also finding that her opinion that the Plaintiff did not have  
13 a severe mental health impairment unpersuasive. The Commissioner agrees that  
14 the ALJ included extraneous verbiage when evaluating Dr. Castro's opinion but  
15 submits there was no resulting harm.

16 Dr. Castro reviewed the medical record in March 2022 during the  
17 reconsideration level of the disability determination. Dr. Castro found Plaintiff's  
18 ADHD nonsevere, that he did not have any other mental impairment, and that he  
19 only had mild limitations under the B Criteria.<sup>36</sup> As to Dr. Castro's administrative  
20 medical finding, the ALJ recognized that Dr. Castro is an expert who is familiar

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22 <sup>36</sup> AR 98–101.  
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1 with the social security programs, and the ALJ further stated: “Overall, I find  
2 Dr. Castro’s opinion to be only somewhat persuasive. I do not find her opinion that  
3 the claimant did not have a severe mental health impairment to be persuasive.”<sup>37</sup>

4 Although the ALJ’s use of the introductory word “overall,” in the above-  
5 quoted sentence was not the most apt phrasing, the Court is able to understand the  
6 ALJ’s evaluation and findings as to Dr. Castro’s opinion. The ALJ agreed with  
7 Dr. Castro that Plaintiff was only mildly limited in the areas of interacting with  
8 others and understanding, remembering, or applying information. But the ALJ  
9 disagreed with Dr. Castro’s mild limitations in the areas of adapting or managing  
10 oneself and concentrating, persisting, or maintaining pace, instead finding that  
11 Plaintiff had moderate limitations in those areas. Thus, the ALJ reasonably found  
12 Dr. Castro’s opined limitations to be “only somewhat persuasive.”<sup>38</sup> And because  
13 the ALJ found that the overall record supported severe mental impairments of  
14 depression and ADHD, the ALJ reasonably found Dr. Castro’s opinion that  
15 Plaintiff did not have a severe mental health impairment to be not persuasive. The  
16 Court finds no error in the ALJ’s evaluation of Dr. Castro’s opinion.

17 **C. Step Five: Plaintiff fails to establish additional error.**

18 Finally, Plaintiff argues that the ALJ failed to consider that Plaintiff is  
19 unable to sustain employment because he has difficulties staying on task,

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21 <sup>37</sup> AR 31.

22 <sup>38</sup> AR 31.

1 submitting the ALJ merely focused on the Medical Vocational Grid borderline-age  
2 analysis. However, the ALJ discounted the opined marked limitation as to  
3 Plaintiff's ability to complete a normal workday and workweek and had found that  
4 Plaintiff's limitation in that ability was moderate only. Moreover, Plaintiff did not  
5 challenge the ALJ's evaluation of Plaintiff's symptom reports. Plaintiff fails to  
6 establish that his production would be diminished by fifteen percent or more, the  
7 threshold to establish he would be unable to work, based on the vocational expert's  
8 testimony about production requirements.<sup>39</sup>

#### 9 IV. Conclusion

10 Plaintiff establishes the ALJ erred only as to the selected date for  
11 application of the advanced-age category. This matter is remanded for payment of  
12 benefits for the remainder of the 6-month period before Plaintiff's 55<sup>th</sup> birthday.

13 Accordingly, **IT IS HEREBY ORDERED:**

- 14 1. The case caption shall be amended consistent with footnote 2.
- 15 2. The ALJ's nondisability decision is **REVERSED, and this matter is**  
16 **REMANDED to the Commissioner of Social Security for**  
17 **immediate calculation and award of Title 16 benefits** for the  
18 additional period from **June 21, 2023, to September 5, 2023**—the  
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21 <sup>39</sup> AR 71 ("If an individual is off task 15% or greater on a consistent basis, we'd  
22 expect them to be released from the position").  
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1 remainder of the six-month period before his 55<sup>th</sup> birthday. In all  
2 other regards, Plaintiff's requested relief is denied.

3 3. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 10 and**  
4 **12**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

5 IT IS SO ORDERED. The Clerk's Office is directed to file this order and  
6 provide copies to all counsel.

7 DATED this 10<sup>th</sup> day of December 2024.

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EDWARD F. SHEA  
10 Senior United States District Judge  
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